IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2274 OF 2004.

Raju @ Doctor Vyankat Swami. ... Petitioner
Versus.
State of Maharashtra. ... Respondent.

Smt.Sonia B.Miskin, Advocate (appointed) for the Petitioner.
Ms.M.H.Mhatre, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 8th August, 2005.

P.C.:

1. Heard the learned Advocate for the Petitioner and the learned A.P.P. for the State. This petition is received through Jail. By order dated 29th May 2003, furlough leave was ordered to be granted in favour of the Petitioner. One of the conditions imposed while granting furlough leave is that before the Petitioner is actually enlarged on furlough leave, the date on which he is to be enlarged on furlough leave and the date on which he is to return back from furlough leave will be informed to the concerned Police by wireless message and it will be ensured that on the date on which the Petitioner is to be enlarged on furlough leave the co-accused are in jail. The challenge in this petition is to the said condition imposed while enlarging the Petitioner on furlough leave.

2. Under the provisions of the Prisons (Bombay Furlough and Parole) Rules 1959 grounds on which the furlough leave can be denied are specifically incorporated. The result of the condition imposed while granting furlough leave in favour of the Petitioner is that if the

co-accused of the Petitioner are not in Jail, the Petitioner will not be enlarged on furlough leave so long as the co-accused are out of jail.

3. In my view, on plain reading of the provisions of the said Rules of 1959, the fact that the co-accused are not in Jail for reason that they have not surrendered after grant of furlough leave in their favour is no ground to refuse furlough leave to the other accused. If the concerned Accused fulfils the provisions of the said Rule of 1959 and is eligible for grant of furlough leave, he cannot be denied furlough leave on the ground that his co-accused have over stayed after they have been enlarged on furlough leave.

4. In my view, considering the facts and circumstances of the case, Condition No.8 incorporated in order dated 29th May 2003 is illegal and deserves to be deleted. Hence this Petition is disposed of by directing that Condition No.8 in order dated 29th May 2003 is deleted. If the Petitioner has complied with the other conditions incorporated in the said order, the authorities will forthwith give benefit of furlough leave to the Petitioner.

5. Copy of this order be forwarded to the Petitioner.

Judge.